

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF DELTA ETA § No. 409, 2009
CORPORATION FOR A WRIT OF §
MANDAMUS §

Submitted: August 6, 2009

Decided: August 28, 2009

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 28th day of August 2009, it appears to the Court that:

(1) The petitioner, Delta Eta Corporation, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus¹ to compel the Superior Court to render a decision on the issue of pre-judgment interest in connection with its decision granting summary judgment in favor of the University of Delaware in *Delta Eta Corporation v. University of Delaware*, C.A. No. 07C-04-580 and, thereby, enter an appealable judgment. The University of Delaware has filed an answer requesting that Delta Eta's petition be dismissed. We find that Delta Eta's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be dismissed.

¹ Del. Const. art. IV, §11(6); Supr. Ct. R. 43.

(2) The Superior Court docket reflects that, on July 29, 2009, at the request of the petitioner, the Superior Court held an office conference to address the issues of pre-judgment interest and whether its decision granting summary judgment in favor of the University of Delaware may properly be appealed to this Court. The Superior Court docket further reflects that the parties filed their post-office conference submissions on August 7 and August 12, 2009, respectively, but that the Superior Court has not yet rendered its decision.

(3) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.² As a condition precedent to the issuance of the writ, a petitioner must demonstrate that a) he has a clear right to the performance of a duty; b) no other adequate remedy is available; and c) the trial court has arbitrarily failed or refused to perform its duty.³

(4) There is no basis for the issuance of a writ of mandamus in this case. The record reflects that the Superior Court has taken steps to resolve the issue of pre-judgment interest, as Delta Eta wishes it to do. As such, Delta Eta's petition is moot. While the Superior Court has not yet rendered

² *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

³ *Id.*

its decision in the matter, this Court will not issue a writ of mandamus to dictate control of the Superior Court's docket.⁴

NOW, THEREFORE, IT IS ORDERED that the petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁴ Id.